IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 59 of 1993
and
INCOME TAX REFERENCE NO. 59A of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K KACHARADAS PATEL SPECIFIC FAMILY TRUST
Versus
COMMISSIONER OF INCOME TAX

Appearance:
1. INCOME TAX REFERENCE No. 59 of 1993
MR SN SOPARKAR, SR. ADVOCATE FOR MRS SWATI SOPARKAR for the Applicant
MR TANVISH U. BHATT for Respondent

2. INCOME TAX REFERENCE No. 59A of 1993
MR SN SOPARKAR, SR. ADVOCATE FOR MRS SWATI SOPARKAR for the Assessee
MR TANVISH U. BHATT for Revenue

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 01/03/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. As can be seen from the Statement of Case, a consolidated reference is made incorporating reference at the instance of the assessee as well as reference at the instance of the revenue. In the circumstances, the Registry is directed to register the reference at the instance of revenue as Income Tax Reference No.59-A of 1993.

Income Tax Reference No.59 of 1993 :

2. The following five questions have been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench "A" at the instance of the assessee :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal while deciding the assessee's appeals against the order passed by the learned C.I.T. u/s 263 of the I.T.Act, 1961, had jurisdiction to direct the Assessing Officer to make proper investigation and then decide the question of allowability of additional commission in accordance with law?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal should have cancelled the order of the C.I.T. directing the Assessing Officer to disallow the additional commission?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal while deciding the assessee's appeals against the order passed by the C.I.T. u/s 263 of the I.T.Act, 1961, had jurisdiction to direct the Assessing Officer to make proper investigation and then decide the question whether there was any excess consumption of soda ash and whether addition was required to be made on that score?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal should have cancelled the

order of the C.I.T. by which he had directed the Assessing Officer to make additions regarding excess consumption of soda ash?

(5) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that interest including bank interest earned by the assessee was not liable to be included in the computation of deduction u/s 80I of the Act?

3. Mr.S.N.Soparkar, the learned Senior Advocate appearing on behalf of the applicant assessee states that he does not press the reference at the instance of the assessee, under instructions. The reference is returned unanswered.

Income Tax Reference No.59-A of 1993 :

4. At the instance of revenue, the following question of law has been referred by the Income Tax Appellate Tribunal :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the Assessing Officer was justified in including the amount relating to excess of recovery on account of advertisement over expenditure in computation for deduction u/s 80I of the Act?"

5. The Assessment Years are 1984-85 and 1985-86. There is no dispute that the facts in relation to both the years are identical. The assessee is carrying on manufacturing activity under a royalty agreement with M/s Nirma Chemical Works Ltd. The assessee is manufacturing detergent powder. It appears from the facts recorded by the Tribunal that the sales of finished products are effected through a chain of consignee distributors located at various stations in the country, and as per the agreement with such consignee distributors, it is the consignee distributors who are primarily liable to incur expenditure on advertisements. However, an arrangement has been worked out between the assessee and such distributors to ensure publication of uniform and systematic advertisements. Therefore, the assessee undertakes work of issuing advertisements and towards expenditure incurred by the assessee, recoveries are effected from the consignee distributors towards such advertisements. The Tribunal has further found that the rate for such recovery was 2% of the net sales or

Rs.1,50,000/-, whichever was less. Accordingly, against expenditure of Rs.32,36,844/- incurred by the assessee, recoveries to the extent of Rs.42,01,069/- have been made, resulting in excess recovery of Rs.9,64,219/- for Assessment Year 1984-85.

6. In the assessment originally framed under Section 143(3) of the Act, the said amount was claimed by the assessee as being profit derived from business and entitled to be taken into consideration for computation of deduction under Section 80I of the Income Tax Act, 1961. The Commissioner of Income Tax initiated revisional action under Section 263 of the Act and held that such excess of recovery was not relatable to the business of the assessee and was not entitled to deduction under Section 80I of the Act. The assessee carried the matter in appeal before the Tribunal and succeeded before the Tribunal.

7. Mr.Tanvish U.Bhatt, the learned standing counsel appearing on behalf of the applicant revenue submitted that such a large scale activity of issuance of advertisements on behalf of number of consignee distributors could not be termed to be a part of the regular business of the assessee, namely, it was not part and parcel of the manufacturing activity. In fact, according to Mr.Bhatt, it was almost a parallel business, like that of an advertising agent, which was undertaken by the assessee and hence, the income generated from such activity could not be termed to be derived from the business of manufacturing activity entitling the assessee to claim deduction under Section 80I of the Act.

8. Mr.S.N.Soparkar, the learned Senior Advocate appearing on behalf of respondent assessee, apart from relying on the impugned order of the Tribunal, invited attention to order of this Court rendered in Tax Appeal No.96 of 1999 dated 19th July 2000, in case of another assessee belonging to the same group to point out that, in similar circumstances, revenue's Tax Appeal was dismissed at the threshold, there being no substantial question of law involved in the circumstances. He also invited attention to the order made by the Apex Court on 4th October 2004, whereby Special Leave Petition against the aforesaid order has been dismissed by the Apex Court.

9. As can be seen from the impugned order of the Tribunal, the Tribunal has taken into consideration terms of the agreement entered into by the assessee with the consignee distributors and recorded a finding to the effect that the recoveries made from consignee

distributors were directly related to net sales of the detergent powder made by the consignee distributors. The Tribunal has also taken into consideration the converse situation, namely, in a case where if the expenditure had exceeded the recoveries, whether the difference arising on excess of expenditure over recoveries would have been allowed as business expenditure referable to the activities of the industrial undertaking, and answered the question by holding that it had direct nexus with the activities of the industrial undertaking.

10. In light of the aforesaid findings recorded by the Tribunal, it is not possible to accept the contention raised on behalf of the applicant revenue that the activity amounted to a different business altogether. Once it is found by the Tribunal that the recovery was directly linked with the sales of the detergent powder, it is not possible to find any infirmity in the process of reasoning adopted by the Tribunal for holding that the excess amount of recoveries made towards advertisements issued by the assessee would be a permissible item to be considered for computing deduction under Section 80I of the Act.

11. In the result, the question referred at the instance of the revenue is answered in the affirmative i.e. in favour of the assessee and against the revenue.

12. Both the references stand disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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